



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

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| आदेश का<br>दिनांक आदेश<br>क्रमांक सहित | आदेश हस्ताक्षर सहित                                                                                                                                                                                                                                                                                                                                                                                                              | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश                                                             |
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|                                        | <b><u>CRIMINAL APPEAL NO.653 OF 2004</u></b>                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                       |
|                                        | <b><u>APPELLANT</u></b><br>(In Jail)                                                                                                                                                                                                                                                                                                                                                                                             | Neta Ram, Son of Chowalal, aged about 35<br>years, resident of Patseoni, P.S.-Chhura,<br>Distt. Raipur (Chhattisgarh) |
|                                        | <b>Vs</b>                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                       |
|                                        | <b><u>RESPONDENT</u></b>                                                                                                                                                                                                                                                                                                                                                                                                         | The State of Chhattisgarh                                                                                             |
|                                        | <b><u>Present:</u></b>                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                       |
|                                        | Mrs. Fouzia Mirza, Adv. with Mr. R.K. Pali, Adv. for the appellant.                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                       |
|                                        | Mr. N.K. Mehta, Panel Lawyer for the respondent-State.                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                       |
|                                        | <b><u>ORAL JUDGMENT</u></b><br>(28 <sup>th</sup> September, 2007)                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                       |
|                                        | <b><u>Per Dhirendra Mishra, J:</u></b>                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                       |
|                                        | <p>This criminal appeal is directed against the judgment of conviction and order of sentence dated 30<sup>th</sup> July, 2004 passed by the learned Sessions Judge, Raipur in S.T. No.10/04 whereby learned Sessions Judge has convicted the appellant under Section 376 of the IPC and sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine additional S.I. for 6 months.</p> |                                                                                                                       |
|                                        | <p>Case of the prosecution, in brief, is that on 15.11.2003 at about 11.00 a.m. the prosecutrix, who is less than 16 years of age having some disability in her leg, was present alone in her home, at that time the accused, who resides in front of her house, came to her house</p>                                                                                                                                           |                                                                                                                       |

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| आदेश का<br>दिनांक आदेश<br>क्रमांक सहित | आदेश हस्ताक्षर सहित                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                        | <p>enquiring about her mother and thereafter took her to a dilapidated house and raped her after shutting her mouth. He also threatened the prosecutrix not to disclose this fact to others and thereafter, left the place of incident. On return of her mother about 5.00 p.m., the prosecutrix narrated the incident to her, whereupon, a panchayat was convened in the village. However, the appellant did not participate in the panchayat, as he was not available in the house and accordingly the report of Ex.P-17 was lodged by the prosecutrix on 16.11.2003 at about 11.30 a.m. The prosecutrix was sent for medical examination where Dr. Uma Paikra (PW-6) examined her and gave her report dated 16.11.2003 of Ex.P-12. Vaginal slides of the prosecutrix were taken into possession vide Ex.P-3. Copy of admission register (Ex.P-1A) of the Primary School Kansindhi pertaining to the prosecutrix was also seized vide seizure memo of Ex.P-5. Underwear of the accused was seized vide seizure memo of Ex.P-6. Accused was sent for medical examination where Dr. R.S. Paikra (PW-5) examined him and gave his report of Ex.P-4. Blood stained sameej of the prosecutrix was taken into possession vide Ex.P-14. p bangles were seized from the house of prosecutrix vide Ex.P-15. The seized articles i.e. slide, underwear, sameej etc were sent for chemical examination to Forensic Science Laboratory, Raipur and the report of the FSL is Ex.C-1.</p> |                                                           |

[पीछे देखें]



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| आदेश का<br>दिनांक आदेश<br>क्रमांक सहित | आदेश हस्ताक्षर सहित                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                        | <p>After completing investigating the charge sheet was filed in the court of Judicial Magistrate 1<sup>st</sup> Class, Gariyabandh. During trial, the prosecution examined 10 witnesses and thereafter, the statement of accused was recorded under Section 313 of Cr.P.C. wherein the appellant took a defence that he has been implicated in a false case due to previous animosity. He also examined three defence witnesses in support of his defence. Learned trial court after hearing learned counsel for the respective parties, convicted and sentenced the appellant, as mentioned in Para 1 of this judgment.</p> <p>Learned counsel for the appellant argued that age of the prosecutrix has been assessed on the basis of school admission register, however, the best evidence being the entry in the Kotwar register has not been filed and even the prosecutrix was not subjected to radiological examination. For the purpose of inferring the age of the prosecutrix the statement of Nirbhay Singh Thakur (PW-2), teacher of Primary School, has been relied upon though there are infirmities in his statement also. It was further argued that there is material improvement in the statement of prosecutrix, as in the FIR as also in her diary statement she alleged that she was dragged from her house upto the dilapidated house where the offence was committed, however, in the statement before the court she has</p> |                                                           |



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| आदेश का<br>दिनांक आदेश<br>क्रमांक सहित | आदेश हस्ताक्षर सहित                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                        | <p>stated that she was bodily lifted upto the dilapidated house and thereafter rape was committed at about 11.00 a.m. This improvement has been deliberately made just to explain the absence of injuries over her person because, had she been dragged she would have sustained abrasions and other injuries. She further submits that as per the report of Dr. Uma Paikra (PW-6) no external or internal injury was found over the person of the prosecutrix and even there was no mark of struggle over the person of the accused, therefore, in these circumstances the possibility of the prosecutrix being the consenting party can be inferred. Reliance is placed in the matter of <b>Joseph S/o Kooveli Poulo Versus State of Kerala</b> reported in [2000] 5 SCC 197.</p> <p>On the other hand, learned counsel for the State has supported the impugned judgment.</p> <p>I have heard learned counsel for the parties. I have perused the impugned judgment as also the oral and documentary evidence available on record.</p> <p>To establish the age of the prosecutrix a copy of school admission register has been adduced in the evidence and the same has been proved by Nirbhay Singh Thakur (PW-2), who has stated that in the admission register of school, copy of which is Ex.P-1, name of the prosecutrix figures at Sr. 1312 wherein her date of birth has been</p> |                                                           |

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| आदेश का<br>दिनांक आदेश<br>क्रमांक सहित | आदेश हस्ताक्षर सहित                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                        | <p>mentioned as 25.1.1988. In the cross-examination this witness has stated that he himself has recorded the above entry as per the information given by Moharsingh on the basis of his affidavit and the fact that Moharsingh submitted an affidavit is entered in another register, which was also brought by him on the date of his examination, and the details of entry in the school register has also been adduced as Ex. P-16. Thus, from the evidence of this witness, which stands un-rebutted by the defence, the date of birth of prosecutrix i.e. 25.1.1988, recorded in the public document on the basis of information given by Moharsingh at the time of her admission is established and accordingly, it is also established that at the time of incident, age of the prosecutrix was admittedly below 16 years.</p> <p>The prosecutrix has deposed that the incident is of 11<sup>o</sup>clock, when she was alone in her house, as her mother had gone to work. The accused came and asked about her mother and thereafter he made some comments and also called her Beti (daughter). When he started grabbing her hand, she resisted, however, he dragged her to the dilapidated house. He also gagged her mouth, pressed her neck, torn her clothes and raped her by mounting over her. Blood started oozing from her private part as a result of which her underwear and sameej were stained with blood and thereafter the accused fled from there.</p> |                                                           |

[पीछे देखें]



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| आदेश का<br>दिनांक आदेश<br>क्रमांक सहित | आदेश हस्ताक्षर सहित                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                        | <p>On return of her mother at about 5.00 p.m. she narrated the incident to her whereupon a panchayat was convened in the village, however, the appellant was not present in the panchayat, as he had gone to Village Chhura. Thereafter, the report was lodged. Certain improvements regarding weeping at the time of incident, pressing of neck etc. have been pointed out during the cross-examination, however, the same does not go to the root of the matter. The prosecutrix has denied the suggestion that she was mimicking the appellant and therefore, he caught her hand and because of that she fallen on the frame of the door and because of that fall she sustained injury over her private part.</p> <p>Manwabai (PW-8) mother of the prosecutrix, has also stated that when she returned from the work, the prosecutrix started weeping and she narrated that the appellant has robbed her honour. Her bangles were broken. She has corroborated the statement of the prosecutrix in material particulars and she has also stated this fact that blood was oozing from her private part, which she has personally seen. She has denied the suggestion that there was any quarrel between the appellant and her. She has also stated that deformity of the leg of the prosecutrix is from the time when she was one year old.</p> |                                                           |

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| आदेश का<br>दिनांक आदेश<br>क्रमांक सहित | आदेश हस्ताक्षर सहित                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                        | <p>Nohar Singh (PW-7), who is the Village Kotwar, is the witness of seizure memo of Ex.P-14 whereby clothing were seized and Ex.P-15 whereby broken bangles of the prosecutrix were seized from the house of the prosecutrix.</p> <p>Chaituram (PW-3) is the witness of panchayat convened in the village and he has stated that in the said meeting the prosecutrix was present and Manwabai had complained in the said meeting that Netram committed rape with her daughter. However, Netram was not present in the said meeting. Similar is the statement of Bhanuram Sahu (PW-1).</p> <p>Dr. Uma Paikra (PW-6), who has examined the prosecutrix, has stated on examination she did not find any external or internal injury over the person of the prosecutrix, however, on internal examination she found that hymen of the prosecutrix was ruptured, it was red in colour, swelling was present, on touching vagina, it was bleeding, vagina admitted only one finger and the prosecutrix was complaining pain. On the basis of her examination, she has opined that the rape was committed with the prosecutrix.</p> <p>So far as the argument of learned counsel for the appellant that the prosecutrix was bordering 16 years and as such, she has attained the age of discretion is concerned, after considering overall</p> |                                                           |

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| आदेश का<br>दिनांक आदेश<br>क्रमांक सहित | आदेश हस्ताक्षर सहित                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                        | <p>evidence available on record and the medical evidence, there is no evidence available on record to suggest that the prosecutrix was a consenting party. So far as the absence of the injury over the person of the prosecutrix is concerned, looking to the age of the prosecutrix that she was below 16 years of age and further considering that she was a handicapped girl and that accused dragged her or bodily lifted her to the place of incident, the absence of injury alone cannot lead to an inference that the prosecutrix was the consenting party.</p> <p>In the matter of Joseph Vs. State of Kerala (supra) the deceased was aged 26 years, charge under Section 376 was mainly based on the theory of last seen together and the fact that vaginal smear confirmed presence of semen and spermatozoa and in these circumstances considering the age of the deceased, as it was the case of murder and rape, it was held that had there been any attempt of rape on a grown-up lady of 26 years old, she would have definitely made some strong resistance.</p> <p>However, in the instant case, as already pointed out, the prosecutrix, who is physically handicapped girl, has been examined and during trial she has narrated the circumstances under which she was dragged and subjected to rape and therefore, there is no reason for disbelieving the version given by the prosecutrix, which is also</p> |                                                           |

[पीछे देखें]



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| आदेश का<br>दिनांक आदेश<br>क्रमांक सहित | आदेश हस्ताक्षर सहित                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                        | <p>supported by the statement of her mother and other independent witnesses that immediately after the incident in the panchayat she narrated about the commission of rape by the appellant. Version of the prosecutrix is further corroborated from the medical report as also the report of FSL.</p> <p>So far as the defence taken by the appellant that there was a previous animosity between the family members of the prosecutrix and the accused is concerned, after going through the statement of defence witnesses and documents filed by the defence during trial regarding quarrel between the appellant and the family members of prosecutrix, it appears that the same pertains to the period after the incident, therefore, the same are of no help to the appellant. Even otherwise it does not appeal to reason that why a mother will involve honour of her daughter aged 16 years for the purpose of wrecking her vengeance with the appellant</p> <p>In the result, the appeal has no substance, the same is liable to be dismissed and it is hereby dismissed.</p> | <p>Sd/-<br/><b>DHIRENDRA MISHRA</b><br/>Judge</p>         |

Roshan/-

प्रीति देवी